No. 93-932

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

TROOPER THOMAS GARDNER,

Petitioner,

v.

RICHARD REED, individually, as administrator of the decedent's estate of Pamela Jo Reed and as guardian of the estates of Angela Reed and Marilyn Reed; CHIEF HERMAN A. DAVIDSON; CITY OF MARTINSVILLE; DEPUTY SHERIFF JAMES F. BENDER; CLARK COUNTY, ILLINOIS; DEPUTY SHERIFF JACK RAGSDALE; and JASPER COUNTY, ILLINOIS,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

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APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 91-3173

RICHARD REED, individually and as administrator of the decedents' estates of Pamela Jo Reed and Jason Wesley Reed, and as guardian of the estates of Angela Reed and Marilyn Reed, minors, and MARILYN KUYKENDALL and ROY KUYKENDALL,

Plaintiffs-Appellants,

v.

TROOPER GARDNER, CHIEF HERMAN A. DAVIDSON, CITY OF MARTINSVILLE, DEPUTY SHERIFF JAMES F. BENDER, CLARK COUNTY, ILLINOIS, DEPUTY SHERIFF JACK RAGSDALE and JASPER COUNTY, ILLINOIS,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois, Benton Division.
No. 90-4199-JLF—**James L. Foreman,** *Senior Judge.*

ARGUED SEPTEMBER 17, 1992—DECIDED FEBRUARY 23, 1993

Before POSNER and FLAUM, *Circuit Judges*, and ZAGEL, *District Judge.**

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* The Honorable James B. Zagel, District Judge of the United States District Court for the Northern District of Illinois, sitting by designation.

FLAUM, *Circuit Judge.* The Reed family suffered a tragic accident on September 11, 1988, when a drunk driver crossed the center line of the highway and crashed into their car. Earlier that day, defendants Gardner, Davidson, and Bender had arrested the original driver of the car, leaving a drunk passenger behind. That passenger became the drunk driver who caused the head-on collision approximately two hours later. The plaintiffs appeal from the district court's dismissal of their section 1983 claims against Gardner, Davidson, and Bender, and from the dismissal of Jason Wesley Reed's claims. We reverse in part and affirm in part.

I.

We review de novo the district court's decision on a motion to dismiss, assuming, as the district court must, the truth of all well-pleaded factual allegations and drawing all reasonable inferences in favor of the plaintiff. *Prince v. Rescorp Realty*, 940 F.2d 1104, 1106 (7th Cir. 1991). According to the complaint, Richard Reed was driving a Chevrolet Suburban north on Illinois Route 130 in Jasper County at midafternoon on September 11, 1988. His wife Pamela Jo Reed, who was eight months pregnant, sat next to him, and their young daughters Angela and Marilyn Reed sat in the back with Pamela's parents Roy and Marilyn Kuykendall. Larry Rice was driving south on Route 130 when he crossed the center line and collided head on with the Reed's car. He was intoxicated at the time of the crash and was being pursued at high speeds by defendant Deputy Sheriff Jack Ragsdale. Pamela Jo Reed died of her injuries, as did the fetus she carried, Jason Wesley Reed. Marilyn Reed suffered brain damage with post-traumatic encephalopathy and seizures, and several broken bones. Richard and Angela Reed sustained minor physical injuries, and both suffer severe emotional trauma. The Kuykendalls suffered broken bones and internal injuries, in addition to emotional trauma.

Approximately two hours before the accident, defendants State Trooper Thomas Gardner, Chief Herman Davidson

of the Martinsville Police Department, and defendant Deputy Sheriff James Bender of the Clark County Sheriff's Department arrested Cathy Irby in Clark County. They left Larry Rice, who had been riding in Irby's car, inside the car with Irby's car keys, although they knew or should have known that Rice was intoxicated.

The district court dismissed Count X of the appellants' complaint, ruling that under *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189, 109 S. Ct. 998 (1989) appellants could not state a claim for deprivation of constitutional rights. The Supreme Court in *DeShaney* held that "a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." *Id.* at 1004. The district court began with the premise that "the thrust of the allegation[s] is that the defendants failed to prevent Rice from [operating] the vehicle", rejecting the plaintiffs' emphasis on the defendants' affirmative action in arresting Irby and "entrusting the car to Rice." Unfortunately, the district court then went outside the pleadings to distinguish cases finding section 1983 liability; it held that the police did not create the dangerous situation in this case because Cathy Irby herself was arrested for driving while intoxicated.

The pleadings, however, contain no allegation, nor can a reasonable inference be drawn, that Cathy Irby was intoxicated when the defendants arrested her. At least one defendant brought to the district court's attention the reason for Irby's arrest, that she was driving while intoxicated. The appellants admit in their brief that this was the reason for Irby's arrest, yet it cannot support the defendants' motions to dismiss. The district court might have converted its ruling to one of summary judgment, and noted the additional crucial fact outside the pleadings. The plaintiffs might have filed a motion for reconsideration based on the inclusion of a fact outside the pleadings. Instead, the district court dismissed the count, relying on Irby's intoxication, and the plaintiffs appealed. We cannot affirm the district court's ruling based on its reasoning.

Assuming the truth of the allegations in the pleadings and making reasonable inferences for the plaintiffs, we must decide whether injured parties can state a claim under section 1983 when police officers arrest a sober driver and leave behind an obviously drunk passenger who takes the wheel. We can affirm only if in that situation *DeShaney* forecloses an action for a civil rights violation. Because on remand the defendants undoubtedly will offer proof of the reason for Irby's arrest, however, we will also address the outcome if the plaintiffs had plead that Irby was intoxicated or if summary judgment had been granted on that basis.

II.

The Due Process Clause of the Fourteenth Amendment provides that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." According to the Supreme Court, the purpose of the Due Process Clause was "to protect the people from the State, not to ensure that the State protected them from each other." *DeShaney* at 1003. Initially, affirmative obligations to protect certain citizens grew out of prison situations, in which the state deprived prisoners of the liberty to care for themselves, *see Estelle v. Gamble*, 429 U.S. 97, 97 S.Ct. 285 (1976), and involuntary commitment of mental patients, for the same reason, *see Youngberg v. Romeo*, 457 U.S. 307, 102 S.Ct. 2452 (1982). The guiding principle of these cases is that, when a state takes custody of a person, "the Constitution imposes upon it a corresponding duty" for his protection. *DeShaney* at 1005. Inaction by the state in the face of a known danger is not enough to trigger the obligation; according to *DeShaney*, the state must have limited in some way the liberty of a citizen to act on his own behalf.

DeShaney's emphasis on the state's obligation under the Due Process Clause to those in its custody seems at first to prevent plaintiffs from proceeding under section 1983. Not only were the Reeds never in custody, they had never

encountered the defendants. The defendants did not even take Rice into custody. *DeShaney*, however, leaves the door open for liability in situations where the state creates a dangerous situation or renders citizens more vulnerable to danger. *Id.* at 1006 ("While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation, nor did it do anything to render him any more vulnerable to them. . . . [I]t placed him in no worse position than that in which he would have been had it not acted at all. . . ."); *see also Gregory v. City of Rogers*, 974 F.2d 1006, 1010 (8th Cir. 1992) (en banc) ("[T]he Due Process Clause imposes a duty on state actors to protect or care for citizens in two situations: first, in custodial and other settings in which the state has limited the individuals' ability to care for themselves; and second when the state affirmatively places a particular individual in a position of danger the individual would not otherwise have faced.") (citations omitted). Police officers who remove sober drivers and leave behind drunk passengers with keys may be said to create a danger or at least render others on the road more vulnerable. Certainly the Reeds are worse off with a drunk driver heading toward them than a sober one.

The complaint accuses defendants Gardner, Davidson, and Bender of infringing the rights of the appellants by creating a dangerous situation and failing to protect them from it.[1] This case, therefore, is distinguishable from cases

[1] The complaint alleges that the defendants "left . . . Rice inside Irby's car with Irby's keys, thereby entrusting the car to Rice . . . ." Appellants and appellees argue over whether this language asserts affirmative conduct or mere inaction. This debate should not detain us. The allegations of the complaint allow reasonable inferences that the defendants left Rice behind, knowing that he was intoxicated and that the keys were in the car. It does not permit inferences that the police handed the keys to Rice, left the car running, or encouraged Rice to drive himself home. The affirmative conduct comes from arresting and removing Irby while knowing that a drunk passenger with the keys remained in the car. That is sufficient for the Reeds, after being injured by the drunk passenger, to state a claim under section 1983.

in which state actors had no hand in creating a danger but "stood by and did nothing when suspicious circumstances dictated a more active role for them." *DeShaney* at 1007; *see, e.g. Archie v. City of Racine*, 847 F.2d 1211 (7th Cir. 1988) (en banc), *cert. den.* 489 U.S. 1065, 109 S.Ct. 1338 (1989) (no §1983 liability for failure to provide requested emergency services). *DeShaney* and its progeny make it clear that the police have no affirmative obligation to protect citizens from drunk drivers. Taken to an extreme, police officers could watch drunk drivers stumble to their cars and drive off, weaving across the road, without incurring section 1983 liability. Similarly, if the defendants had failed to arrest Irby, they would have had no liability if she had exchanged places with Rice and he had driven headlong into the Reed's car. It was the police action in removing Irby, combined with their knowledge of Rice's intoxication, which creates their liability for the subsequent accident.

Our holding makes it clear that the Reeds face an insurmountable hurdle on summary judgment. As the district court foreshadowed, police officers are not subject to liability under section 1983 for exchanging one drunk driver for another. The reason is simple: without state intervention, the same danger would exist. The state action did not place individuals in a position of danger that otherwise they would not have faced. The Reeds are no worse off with Irby driving while intoxicated than they are with Rice driving while intoxicated.[2] Therefore, the evidence of Irby's intoxication supports a finding of summary judgment on the claim for civil rights violations.

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[2] The appellants argue that Rice was more intoxicated and thus more dangerous. We cannot foresee imposing liability based on that type of hairsplitting. The officers' knowledge of the intoxication of those with car keys will be the standard. Otherwise, we run the risk of demanding, under the same line of reasoning, distinctions between which driver was more adept or experienced or well-rested.

Even if Irby had not been intoxicated, the defendants might have prevailed on a summary judgment motion if the plaintiffs could offer no support for the allegation that the officers "knew or should have known that Rice was intoxicated." The Eighth Circuit recently grappled with a similar case, in which the police arrested a sober "designated" driver and left intoxicated passengers in the car. *Gregory v. City of Rogers*, 974 F.2d 1006, 1010 (8th Cir. 1992) (en banc). After detaining the driver for running a red light, police officers discovered an outstanding arrest warrant for him. The officers allowed the driver to follow them to the police station in his car with his passengers. After the sober driver entered the station, one passenger who was intoxicated drove the car and became involved in a car accident that killed him and injured the other passenger. The Eighth Circuit majority affirmed summary judgment, holding that no reasonable factfinder could have concluded that the officers knew or should have known that the passengers were intoxicated. *Id.* at 1010-11.[3] Like the Eighth Circuit, we would require from a plaintiff sufficient evidence from which a jury could reasonably draw the inference that police officers knew or should have known that car passengers were intoxicated. *See id.* at 1011 (appellants' evidence supported "nothing more than a mere supposition—a possibility or guess . . ." that the two adult passengers were intoxicated). Because the district court dismissed the Reeds' case, we do not know what evidence would support such knowledge by the defendants.

While we have been hesitant to find section 1983 liability outside the custodial setting, *see, e.g. Losinski v. Coun-*

[3] The majority also decided that, even if the officers had known the passengers were intoxicated, they could not be found liable for leaving the passengers in the car. Because the officers left the passengers in the care of their designated driver, it was that driver's negligence in leaving them with car keys that created the danger. *Id.* at 1011-12. We have no need to decide whether a sober driver in that situation must bear full responsibility for the subsequent actions of his intoxicated passengers.

ty of Trempealeau, 946 F.2d 544 (7th Cir. 1991); *Archie v. City of Racine*, 847 F.2d 1211 (7th Cir. 1988) (en banc), we find that plaintiffs such as the Reeds may state claims for civil rights violations if they allege state action that creates, or substantially contributes to the creation of, a danger or renders citizens more vulnerable to a danger that [sic] they otherwise would have been. *See Ross v. United States*, 910 F.2d 1422 (7th Cir. 1990) (plaintiff whose son drowned stated §1983 claim where arbitrary county policy prevented private assistance and failed to provide state assistance). Our recent decision in *Losinski v. County of Trempealeau*, 946 F.2d 544 (7th Cir. 1991) evidences a narrow but critical distinction. In *Losinski*, a sheriff's deputy accompanied a woman, at her request, to her estranged husband's trailer where she intended to retrieve some belongings. The deputy did not intervene in an ensuing dispute between Julie Losinski and her husband until the husband produced a gun and shot her. Although we found the issue to be close, we determined that the state did not create or enhance the danger Losinski faced, and therefore *DeShaney* precluded section 1983 liability. *Id.* at 550-51. Julie Losinski enlisted the state's assistance in confronting a known danger, and that assistance fell short of protecting her from harm. The officers in this case initiated the state action, by arresting Irby and removing her from the car. That state intervention created the dangerous condition, a drunk driver on the road.

The defendants' lack of direct contact with the appellants does not necessarily preclude this action against them. By removing a safe driver from the road and not taking steps to prevent a dangerous driver from taking the wheel, the defendants arguably changed a safe situation into a dangerous one. The dangers presented by drunk drivers are familiar and specific; in addition, the immediate threat of harm has a limited range and duration. *See Nishiyama v. Dickson County*, 814 F.2d 277, 280 (6th Cir. 1987) (en banc) (§1983 liability found where inmate uses patrol car to detain motorist whom he then murders, "identity of potential victims [not] difficult to define"); *cf. Bowers v.*

DeVito, 686 F.2d 616 (7th Cir. 1982) (no state action link to murder based on release of mental patient one year earlier). When the police create a specific danger, they need not know who in particular will be hurt. Some dangers are so evident, while their victims are so random, that state actors can be held accountable by any injured party. Despite the two hour time lapse and the distance between the place of Irby's arrest and the car accident, the events are not sufficiently attenuated to relieve the defendants of section 1983 liability. *Cf. Martinez v. California*, 444 U.S. 277, 286, 100 S.Ct. 553, 559 (1980) (five months since release of parolee makes girl's murder "too remote a consequence" of state action for civil rights liability to attach).

This case presents an indisputably close question. The defendants' alleged actions do not involve the same type of shocking conduct as in *Nishiyama* where deputies gave a fully equipped, clearly marked patrol car to a felon in custody and ignored the risks to motorists even after they were told that he was stopping cars at the roadside. These defendants, however, did engage in reckless conduct similar to the officer who left a passenger alone and on foot in a high crime area (*Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989), *cert. denied*, 111 S.Ct. 341 (1990)) or the officers who arrested a driver and left young children stranded on the highway (*White v. Rochford*, 592 F.2d 381 (7th Cir. 1979)). While they did not create the danger by buying Rice drinks and providing him with a car, they did take action under color of state law which rendered the Reeds and the other motorists on Route 130 vulnerable to a dangerous driver.

The great difficulty in this case is in judging precisely what the defendants ought to have done that they did not do. While we do not seek to expand any existing duties for police officers, we do suggest that officers may be subject to suit under section 1983 if they knowingly and affirmatively create a dangerous situation for the public and fail to take reasonable preventative steps to diffuse that danger. Thus, removing one drunk driver and failing to

prevent replacement by another drunk will not subject officers to section 1983 liability, any more than an initial failure to remove the first drunk driver would. Further, removing one drunk driver and leaving behind seemingly sober adult passengers could not subject them to liability. Extraordinary measures are not required; the yardstick will be reasonable action based on the specific circumstances confronting the officers on the scene, subject to their immediate capabilities and the possible limitations inherent to a highway or street patrol response. For example, police officers do not have to search for an extra set of keys or other means of starting the car, nor do they have to make sure a passenger is carrying a valid driver's license. They need not ferry stranded passengers who would otherwise be inconvenienced, absent a rare combination of factors that turns the inconvenience into a real and obvious danger. It is the special circumstance plead in this case, that the defendants removed a driver, who it must be inferred was sober, and left behind a passenger, whom they knew to be drunk, with the car keys, that states a claim for deprivation of constitutional rights under 42 U.S.C. §1983.

III.

Two additional issues remain. The appellants contest the district court's dismissal of Jason Wesley Reed's claims on the basis that a fetus cannot state a claim under section 1983. We agree with the district court. Claims may be brought under 42 U.S.C. §1983 for violations of the Fourteenth Amendment. This circuit has already concluded that fetuses are not persons within the scope of the fourteenth amendment. *Keith v. Daley*, 764 F.2d 1265, 1271 (7th Cir.), *cert. denied*, 474 U.S. 980, 106 S.Ct. 383 (1985), *citing Roe v. Wade*, 410 U.S. 113, 158, 93 S.Ct. 705, 729 (1973). A state's protection of fetuses from criminal conduct cannot create new rights under, nor expand the scope of, the Fourteenth Amendment. Illinois' recognition of fetal life in several of its criminal statutes does not affect the

appellant's claims under section 1983. Every state right does not have a corresponding federal constitutional protection. The district court correctly dismissed the claims of the fetus.

The appellees claim that the district court abused its discretion in granting an extension for a timely appeal. The plaintiffs initially filed an appeal under the name "Richard Reed, etc., et al."; this heading does not suffice. *See Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 318, 108 S.Ct. 2405, 2409 (1988) (final judgment affirmed as to intended appellant whose name was omitted by clerical error). Rule 3(c) requires that a notice of appeal "shall specify the party or parties taking the appeal . . . ." Fed. R. App. P. 3(c).[4] When an order of this court informed them of the deficiency, the appellants went back to the district court which granted the extension.

According to the Supreme Court, Rule 3(c) presents an inflexible jurisdictional requirement for proper notice of appeal. In *Torres*, the Court specifically considered and rejected the possibility that "et al." could preserve an appeal for an unnamed party. *Torres*, at 318, 108 S.Ct. at 2409. Previously we have permitted an extension for excusable neglect, at the discretion of the district court, where the named and unnamed parties had "identical interests," so that the notice of appeal left "no room for doubt as to who is taking the appeal." *Albedyll v. Wisconsin Porcelain Co. Rev. Ret. Plan*, 947 F.2d 246, 253 (7th Cir. 1991). In this case, however, the appellants each pursue separate claims for their injuries, none dependent on another in order to appeal. An appellant's misunderstanding of Rule 3(c) and ignorance of *Torres* and recent caselaw in this circuit cannot constitute excusable neglect. The appellees had notice within thirty days that Richard Reed would appeal. It is on his appeal, individually and in his other capacities, that we rule today. We find, however,

[4] The text of Rule 3(c) does not contain a citation to *Torres* nor a specific reference to the inadequacy of the use of "et al."

that the district court's extension of time for excusable neglect cannot preserve our jurisdiction over the Kuykendalls' appeal.

The judgment of the district court is

AFFIRMED IN PART,
REVERSED IN PART.

POSNER, *Circuit Judge*, dissenting in part. I join Part III of the court's opinion, but would avoid reaching the difficult constitutional question whether, if Irby (the driver whom the police arrested) had been sober, the complaint might have stated a claim for relief under the due process clause of the Fourteenth Amendment.

The defendants' briefs state that Irby was arrested for driving while intoxicated and was in fact intoxicated. The plaintiffs filed a reply brief but did not allude to the statement, so at argument we pressed their counsel on the question. She did not admit that Irby had been arrested for drunk driving or had been drunk, but neither did she deny it—she said it was not in the record. The court interprets this response as an admission and goes on to say that, because of the admission, "the Reeds face an insurmountable hurdle on summary judgment." The problem is that the district judge did not grant summary judgment; he dismissed the case on the pleadings.

It is not obvious what difference that should make. This court has said, in effect, that the case is moot, because the only theory on which the law entitles the plaintiffs to recover requires that Irby have been sober when she was arrested. If she was drunk, then by arresting her the police did not create a danger to the Reeds or anyone else, for if they hadn't arrested her the car would still have been driven by a drunk driver, one as likely to cause an accident as the drunk who replaced Irby when she was arrested. If she was drunk, then when the defendants move for summary judgment on remand it will be granted and

we will affirm, should the plaintiffs be foolish enough to appeal. We should not pronounce on legal questions, let alone constitutional questions, let alone difficult constitutional questions, in a case in which our answers cannot alter the outcome.

It is true that when a case is dismissed on the ground that the complaint fails to state a claim, and the dismissal is appealed, the appellate court will often find itself deciding legal issues, including difficult constitutional issues, on the basis of "facts" that, being merely the facts alleged by the plaintiff in the complaint, may well be false, and the true facts may raise no legal issues at all. But it is one thing to decide a case on facts that may be false, and another to decide it on facts known to be false.

There is no insurmountable procedural obstacle to our disposing of this case without reaching the constitutional issues. A district judge can, of course, grant summary judgment on his own initiative, provided the substantive standard (no genuine issue of material fact) of Rule 56 is met and the nonmovant had adequate notice. *Russell v. PPG Industries, Inc.*, 953 F.2d 326, 332 n. 4 (7th Cir. 1992); *Macon v. Youngstown Sheet & Tube Co.*, 698 F.2d 858, 861 (7th Cir. 1983). That is proposition number one. And when a judge resolves a case on summary judgment, our review is plenary, *Tobey v. Extel/JWP, Inc.*, No. 92-1754, slip op. at 3 (7th Cir. Feb. 3, 1993); so it is as if *we* were granting summary judgment. Which is proposition number two. It follows from these two propositions that we can grant summary judgment ourselves, and on our own initiative, in an appropriate case. I can find no case in which this was done, but *Experimental Engineering, Inc. v. United Technologies Corp.*, 614 F.2d 1244, 1247 (9th Cir. 1980), suggests that it is a proper procedure in an appropriate case. Cf. *American Nurses' Association v. Illinois*, 783 F.2d 716, 729 (7th Cir. 1986).

Is this an appropriate case? Admissions are trumps for purposes of Rule 56. *Tobey v. Extel/JWP, Inc.*, No. 92-1754, slip op. at 6 (7th Cir. Feb. 3, 1993); *Maksym v. Loesch*,

937 F.2d 1237, 1241 (7th Cir. 1991). But we have an inferred rather than an explicit admission, and we have not given notice to the plaintiffs of any intention to grant summary judgment. While I think an affirmance could be defended, I would be more comfortable with a remand for the limited purpose of allowing the district judge to conduct a summary-judgment proceeding that would in all likelihood enable this case to be resolved without our having to decide any constitutional questions.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT—WITH ORAL ARGUMENT

Date: February 23, 1993

BEFORE: Honorable Richard A. Posner, Circuit Judge
Honorable Joel M. Flaum, Circuit Judge
Honorable James B. Zagel, District Judge*

No. 91-3173

RICHARD A. REED, Individually and as Administrator of the Estates of PAMELA J. REED and JASON W. REED, deceased, and as Guardian of the Estates of ANGELA REED and MARILYN REED, minors, MARILYN KUYKENDALL and ROY KUYKENDALL,

Plaintiffs-Appellants

v.

TROOPER GARDNER, CHIEF HERMAN A. DAVIDSON, CITY OF MARTINSVILLE, et al.,

Defendants-Appellees

Appeal from the United States District Court for the Southern District of Illinois, Benton Division
No. 90 C 4199, James L. Foreman, Senior Judge

* The Honorable James B. Zagel, District Judge of the United States District Court for the Northern District of Illinois, is sitting by designation.

This cause was heard on the record from the above mentioned District Court, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this court that the judgment of the District Court is AFFIRMED in part and REVERSED in part, in accordance with the decision of this court entered this date. Each party shall bear its own costs.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

June 8, 1993

HON. RICHARD A. POSNER, Circuit Judge
HON. JOEL M. FLAUM, Circuit Judge
HON. JAMES B. ZAGEL, District Judge*

RICHARD A. REED, Individually and as Administrator of the Estates of PAMELA J. REED and JASON W. REED, deceased, and as Guardian of the Estates of ANGELA REED and MARILYN REED, minors, MARILYN KUYKENDALL and ROY KUYKENDALL,

Plaintiffs-Appellants,

No. 91-3173 v.

TROOPER GARDNER, CHIEF HERMAN A. DAVIDSON, CITY OF MARTINSVILLE, et al.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois, Benton Division.
No. 90 C 4199—James L. Foreman, Senior Judge.

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* The Honorable James B. Zagel of the Northern District of Illinois, sitting by designation.

ORDER

On consideration of the petition for rehearing *en banc* filed in the above-entitled cause on March 30, 1993, by defendant-appellee, Trooper Thomas Gardner, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby DENIED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

March 12, 1992

By the Court:

RICHARD A. REED, Individually and as Administrator of the Estates of PAMELA J. REED and JASON W. REED, deceased, and as Guardian of the Estates of ANGELA REED and MARILYN REED, minors, MARILYN KUYKENDALL and ROY KUYKENDALL,

Plaintiffs-Appellants,

No. 91-3173 v.

TROOPER GARDNER, CHIEF HERMAN A. DAVIDSON, CITY OF MARTINSVILLE, DEPUTY SHERIFF JAMES E. BENDER, CLARK COUNTY, ILLINOIS, DEPUTY DEPUTY [sic] SHERIFF JACK RAGSDALE, JASPER COUNTY, ILLINOIS,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Illinois, Benton Division.
No. 90 C 4199—James L. Foreman, Chief Judge.

This matter comes before the court for its consideration of the following documents:

1. "MOTION FOR CORRECTION OF THE CAPTION ON APPEAL" filed herein on January 22, 1992, by counsel for appellee Thomas Gardner.

2. "PLAINTIFFS-APPELLANTS' RESPONSE TO THE MOTION OF THOMAS GARDNER TO CORRECT THE CAPTION ON APPEAL" filed herein on March 4, 1992, by counsel for the appellants.

On consideration thereof,

IT IS ORDERED that the MOTION FOR CORRECTION OF THE CAPTION ON APPEAL is GRANTED. The appellees in this case are as follows:

TROOPER GARDNER, CHIEF HERMAN A. DAVIDSON, CITY OF MARTINSVILLE, DEPUTY SHERIFF JAMES E. BENDER, CLARK COUNTY, ILLINOIS, DEPUTY SHERIFF JACK RAGSDALE, JASPER COUNTY, ILLINOIS.

App. 21

[FILED JULY 10, 1991]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CIVIL NO. 90-4199

RICHARD REED, et al.,

Plaintiffs,

vs.

LARRY RICE, et al.,

Defendants.

MEMORANDUM AND ORDER

FOREMAN, Chief Judge:

Before the Court are several motions to dismiss filed by defendants Ragsdale and Jasper County (Document No. 8), Gardner and the Illinois State Police (Document No. 11), Davidson and the City of Martinsville (*See* Document No. 15), and Bender and Clark County (Document No. 23).

As a preliminary matter, the Court **GRANTS** defendants Davidson and the City of Martinsville's motion for leave to file their appearance, jury demand and motion to dismiss (Document No. 15), their Motion to Correct Defendants' Motion to Dismiss (Document No. 30), and their motions for leave to file additional appearances (Document Nos. 18 and 36). The defendants' third motion for leave to file an additional appearance (Document No. 28) appears

to be duplicative of Document No. 18 and is therefore **DENIED** as **MOOT**.

The Court further **GRANTS** the Plaintiffs' Motion for Leave to File Memorandum in Opposition to Motion to Dismiss Out of Time (Document No. 16) and Plaintiffs' Motion for Leave to File Additional Authority in Support of Their Responses to the Motions to Dismiss (Document No. 35).

As a final preliminary matter, the Court notes that the plaintiffs have voluntarily dismissed defendant Orchard Inn (*See* Document No. 26). Therefore, Orchard Inn's Motion to Dismiss (Document No. 25) is **DENIED** as **MOOT**.

I. BACKGROUND

The plaintiffs filed their original complaint on August 31, 1990. This complaint was stricken by the Court for violation of Local Rule 9(a) and the plaintiffs filed an amended complaint on September 24, 1990. The amended complaint alleges that on September 11, 1988, defendant Irby was arrested by defendants Gardner, Davidson and Bender for driving while intoxicated. Gardner is an Illinois state trooper, Davidson is the chief of the Martinsville Police Department, and Bender is a Clark County deputy sheriff.

The amended complaint states that after Irby's arrest, the officers left defendant Rice inside Irby's vehicle with the keys, thereby entrusting the vehicle to Rice when they knew or should have known that Rice was intoxicated. Approximately two hours later, Rice crossed the center line while driving Irby's car and hit the plaintiffs' vehicle head-on, causing the death of one passenger and her fetus and injuring five other passengers. The plaintiffs allege that just before the crash, defendant Ragsdale

chased Rice at speeds of more than 90 m.p.h., in an unmarked car, without sounding a siren or operating flasher lights.

The plaintiffs have alleged that the conduct of defendants Gardner, Davidson, Bender and Ragsdale caused or contributed to the crash. The plaintiffs seek damages from these defendants based upon (1) deprivation of the plaintiffs' life, liberty or property rights in violation of the Fourteenth Amendment rights; and (2) the defendants' willful and wanton conduct pursuant to **Ill. Rev. Stat.** ch. 85, ¶ 2-202.

II. ANALYSIS

For purposes of defendants' motions, all well-pleaded allegations of the complaint must be taken as true. *Wolfolk v. Rivera*, 729 F.2d 1114, 1116 (7th Cir. 1984). The test to be applied on a motion to dismiss is whether "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). A plaintiff need not set out in detail the facts upon which a claim is based, but must allege sufficient facts to outline the cause of action. *Ellsworth v. City of Racine*, 774 F.2d 182, 184 (7th Cir. 1985).[1]

[1] Defendants Bender and Ragsdale attack the plaintiffs' complaint on the grounds that it fails to sufficiently allege certain facts which constitute elements of the plaintiffs' causes of action. The defendants forget, however, that "fact pleading" is not required in federal court; rather the Federal Rules of Civil Procedure sanction "notice pleading." *Roberts v. Acres*, 495 F.2d 57, 58 (7th Cir. 1974). Defendants Bender and Ragsdale also argue that the complaint is defective because it commingles the claims of multiple plaintiffs in each of Counts 10 through 13, rather than separating each plaintiff's claim into a separate count. The Court, however, finds the complaint permissible under Federal Rule of Civil Procedure 10(b).

A. Jurisdiction

The defendants raise several arguments regarding the Court's jurisdiction over the plaintiffs' claims. First, defendant Bender points out that the amended complaint fails to invoke the jurisdiction of the court under 42 U.S.C. § 1983 or 28 U.S.C. § 1343(3). The plaintiffs acknowledge that they have not expressly invoked section 1343(3), but state that the proper course is to allow them to amend their complaint rather than to dismiss it. The Court agrees. Under 28 U.S.C. § 1653, "[d]efective allegations of jurisdiction may be amended . . . in the trial . . . court[ ]." Accordingly, the Court **GRANTS** the plaintiffs leave to amend their complaint to expressly invoke the Court's jurisdiction under 28 U.S.C. § 1343(3) and to identify their civil rights claims as being brought pursuant to 42 U.S.C. § 1983.

Defendant Clark County next argues that the Court lacks jurisdiction over the state law claims against the governmental agencies in Counts 11 and 13 of the amended complaint. As Bender points out, federal courts have jurisdiction to hear pendent claims but they do not have jurisdiction over pendent parties—i.e., parties not named in any claim that is independently cognizable by the federal court. *Finley v. United States*, 490 U.S. 545 (1989).[2] Thus, Counts 11 and 13 of the plaintiffs' amended com-

[2] The Court notes that Congress recently enacted a supplemental jurisdiction statute that would allow federal courts to exercise jurisdiction over "claims that involve the joinder or intervention of additional parties." 28 U.S.C. § 1367 (1990). However, this statute applies only to civil actions commenced after the date of enactment, December 10, 1990. Thus, it is inapplicable to this suit, which was filed in August 1990.

plaint properly raise pendent claims against defendants Gardner, Davidson, Bender, and Ragsdale because they are already named as defendants in Counts 10 and 12, over which this Court has jurisdiction under 28 U.S.C. §§ 1331 & 1343(3). However, the governmental entities in Counts 11 and 13 have not been named in any claims to which federal jurisdiction applies. Similarly, all of the claims against defendants Rice and Irby are based solely upon state law.

The Court, therefore, concludes that it lacks subject matter jurisdiction over the claims against Rice, Irby, and the governmental entities. Accordingly, Counts 1 through 8 must be **DISMISSED**, along with the claims against the City of Martinsville, Clark County, and Jasper County in Counts 11 and 13. The Court notes that the plaintiffs previously dismissed their claims against the Illinois State Police (Document No. 12). Thus, the remaining arguments raised by that defendant are now **MOOT**.

B. Statute of Limitations

The defendants argue that Counts 10 through 13 of the plaintiffs' amended complaint are time-barred under the Illinois Tort Immunity Act's one-year statute of limitations for tort actions against governmental entities and employees. ILL. REV. STAT. ch. 85, ¶ 8-101 (1987). Because the plaintiffs' injuries occurred on Septemer 11, 1988, the defendants contend that the complaint should have been filed before September 11, 1989.

The Court initially notes that Counts 10 and 12 allege federal civil rights claims against defendants Gardner, Davidson, Bender, and Ragsdale. In suits brought pursuant to 42 U.S.C. § 1983, the federal courts will borrow

the state's general personal injury statute of limitations. *Wilson v. Garcia*, 471 U.S. 261 (1985). Thus, the applicable statute of limitations for section 1983 suits brought in Illinois is two years. *Kalimara v. Illinois Dep't of Corrections*, 879 F.2d 276 (7th Cir. 1989). The one-year limitations provision in the Illinois Tort Immunity Act, ILL. REV. STAT. ch. 85, ¶ 8-101, is not applicable to federal civil rights actions. *See Cain v. City of Chicago*, 619 F. Supp. 1228, 1233 (N.D. Ill. 1985) ("Tort Immunity Act was intended to apply to common law tort claims as opposed to quasi-tort actions of a constitutional nature."); *Luker v. Nelson*, 341 F. Supp. 111, 117-18 (N.D. Ill. 1972).

Defendant Ragsdale argues that the plaintiffs also have failed to meet the two-year limitations period because the amended complaint was not filed until September 24, 1990—more than two years after the plaintiffs' injuries occurred. The Court notes, however, that the plaintiffs first filed their complaint on August 31, 1990. The amended complaint was filed after the original complaint was stricken for violation of a local rule regarding incorporation by reference. Under Federal Rule of Civil Procedure 15(c), the amended complaint relates back to the date of the original pleading. Therefore, the Court finds that the plaintiffs' civil rights claims in Counts 10 and 12 are not time-barred.

With respect to the pendent state law claims in Counts 11 and 13, however, the Court concludes that the one-year limitations period in the Tort Immunity Act does apply. The plaintiffs argue that the wrongful death claims for the deaths of Pamela Jo Reed and Jason Wesley Reed are governed by the two-year statute of limitations in the state's wrongful death statute. ILL. REV. STAT. ch. 70, ¶ 2. The Court disagrees. The statute of limitations

provision in the Tort Immunity Act is a "special statute[ ] applicable to suits against public entities . . . which supersede[s] any pertinent general limitations statute thereto in effect . . . ." *Stanley v. Denning*, 130 Ill. App. 2d 628, 264 N.E.2d 521, 524 (2d Dist. 1970). By its terms, the Tort Immunity Act's one-year limitation period applies to civil actions for any injury, which is further defined in the act as "death, injury to a person, or damage to or loss of property." ILL. REV. STAT. ch. 85, ¶¶ 8-101, 1-204. The Tort Immunity Act, therefore, covers wrongful death actions as well as other types of tort actions filed against government entities.

The plaintiffs correctly argue, however, that the limitations period is tolled for the minors, Angela and Marilyn Reed. Statutes of limitation are generally tolled during a plaintiff's infancy. *Girman v. County of Cook*, 103 Ill. App. 3d 897, 431 N.E.2d 1291 (1st Dist. 1981); *Mendez v. Rutherford*, 655 F. Supp. 115 (N.D. Ill. 1986). Thus, Illinois courts have held that the Tort Immunity Act's notice requirement—which has since been repealed—is inapplicable to minors. *Girman*, 431 N.E.2d at 1293-94. In so holding, the courts have embraced a policy of protecting minors "from being deprived of an adjudication of their rights through no fault of their own." *Id.*

Based upon this reasoning, the Court finds that the minors' claims are not barred by the one-year statute of limitations in the Act. They may bring their claims against the governmental entities within one year from the date of injury or one year from the date of attaining majority. *Id.* at 1294. This ruling applies both to the minor's own injuries and to their claims as beneficiaries of the wrongful death claim of their mother. *Id.* at 1293-94. Thus, the Court holds that plaintiff Richard Reed, as administrator

of decedent Pamela Jo Reed's estate, may prosecute her wrongful death claims in Counts 11 and 13 on behalf of Angela and Marilyn Reed. As guardian of the two minors, he may also prosecute their claims for their own personal injuries.

The wrongful death claims for Jason Wesley Reed in Counts 11 and 13 present a more difficult case. However, the Court need not decide whether section 8-101 was tolled for these claims. Because the Court holds below that the amended complaint fails to state a section 1983 claim for Jason Wesley Reed, his state law claims must also be dismissed.

C. Federal Claims Against Gardner, Davidson, and Bender

Defendants Gardner, Davidson, and Bender argue that Count 10 of the plaintiffs' amended complaint fails to state a claim upon which relief can be granted. Count 10 alleges that these three defendants violated the plaintiffs' constitutional rights when they arrested Irby and left Rice in Irby's car with the car keys, thereby entrusting him with the car when they knew or should have known that he was intoxicated. The amended complaint alleges that as a result of these actions, the defendants caused or contributed to the crash between the plaintiffs' vehicle and the car Rice was driving.

The defendants argue that the plaintiffs fail to state a claim for deprivation of their constitutional rights because the defendants had no constitutional duty to protect the plaintiffs. In support of this argument, the defendants cite *DeShaney v. Winnebago County Dep't of Social Services*, 489 U.S. 189 (1989), in which the Supreme Court held that

"a State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause."

The Supreme Court was careful to point out, however, that while the state may have been aware of the dangers that the plaintiff in *DeShaney* faced,

> it played no part in their creation, nor did it do anything to render him any more vulnerable to them.
> . . .
> . . . The most that can be said of the state functionaries in this case is that they stood by and did nothing when suspicious circumstances dictated a more active role for them.

Id. at 201. In the case at bar, the plaintiffs have alleged that the defendants affirmatively created the danger that caused their injuries. Thus, they argue that their case is distinguishable from *DeShaney*.

The plaintiffs contend that the defendants engaged in an affirmative act by "entrusting" Irby's vehicle to Rice. However, the only affirmative act alleged in the amended complaint is that the defendants arrested Irby. The remainder of the plaintiffs' allegations are directed at the defendants' *inaction*. The allegations are stated in positive terms—"They left defendant Larry Rice inside Irby's car with Irby's keys, thereby entrusting the car to Rice"—but the thrust of this allegation is that the defendants failed to prevent Rice from taking control over the vehicle.

This case is similar to *Gregory v. City of Rogers*, 921 F.2d 750 (8th Cir. 1990), but is distinguishable in one very significant respect. In *Gregory*, the two passengers in the vehicle were intoxicated, but the driver was sober. Thus, when the police officer arrested the driver on an outstand-

ing warrant, the officers deprived the passengers of their "designated driver." After the driver was arrested, one of the passengers took the wheel and ended up crashing the car, killing himself and seriously injuring the other passenger. Based upon those facts, the court held that the police officer had created the dangerous situation. "[B]y removing that driver, the state exposed the two passengers to grave danger . . . ." *Id.* at 754.

Gregory, therefore, is based upon the premise that "a constitutional deprivation can arise from private violence when the state affirmatively places a particular individual in a place of danger in which the individual would not otherwise have been." *Id.* at 755. The same theory applies to the other cases discussed in the *Gregory* decision. *See, e.g., Wood v. Ostrander*, 879 F.2d 583 (9th Cir. 1989) (after a police officer arrested driver and impounded car, leaving passenger in a high-crime area, the passenger accepted a ride with an unknown motorist who took her to a secluded area and raped her), *cert. denied*, 111 S. Ct. 341 (1990); *White v. Rochford*, 592 F.2d 381 (7th Cir. 1979) (police officers arrested a driver for drag-racing on a busy Chicago highway but left several children in the car on the side of the highway).

In the case at bar, the plaintiffs have not alleged that the police officers took a safe situation and turned it into a dangerous situation by arresting Irby. To the contrary, Irby herself presented a danger to other motorists. At best, the amended complaint alleges that the officers, after removing one intoxicated driver from the road, failed to take steps to prevent a second intoxicated person from taking the wheel.

The Court, therefore, concludes that the plaintiffs' amended complaint fails to state a claim against defen-

dants Gardner, Davidson, and Bender for deprivation of constitutional rights. Accordingly, Count 10 of the amended complaint must be **DISMISSED**. Based upon the earlier discussion regarding pendent party claims, the Court further holds that Count 11 must be **DISMISSED** as well.

D. Federal Claims Against Ragsdale

Count 12 of the amended complaint is similar to Count 10 in that it alleges that defendant Ragsdale deprived the plaintiffs of their constitutional rights. However, Count 12 presents a different case from that of the other police officers. The plaintiffs are not alleging that Ragsdale failed to protect them; rather, they allege that Ragsdale affirmatively placed them in a position of danger by chasing Rice at high speeds without sounding a siren or operating flasher lights. Thus, they have alleged that Rice *created* the dangerous situation that resulted in their injury.

Moreover, the plaintiffs allege that Ragsdale's actions were taken with deliberate indifference to the safety of others. Accordingly, the Court finds that the plaintiffs have sufficiently pleaded a claim for relief under 42 U.S.C. § 1983. *See Archie v. City of Racine*, 847 F.2d 1211 (7th Cir. 1988) (the court assumes that "the Supreme Court would hold that recklessly causing the death of another deprives that person of life without due process."), *cert. denied*, 489 U.S. 1069 (1989).

Defendant Ragsdale next argues that the amended complaint fails to show facts entitling relief for death of Jason Wesley Reed, who was an unborn infant at the time of the accident. In support of this argument, Ragsdale cites *Green v. Smith*, 71 Ill. 2d 501, 377 N.E.2d 37 (1978), in which the Illinois Supreme Court held that no cause of

action exists for the wrongful death of an unborn infant unless the fetus had attained viability at the time of the occurrence. *Green*, however, is inapposite because it dealt with a wrongful death claim under state law. The case at bar is brought pursuant to 42 U.S.C. § 1983. Thus, federal law governs whether the plaintiffs may recover for the death of a fetus.

One federal court has held that a viable fetus is a "person" capable of bringing a section 1983 suit. *Douglas v. Town of Hartford*, 542 F. Supp. 1267 (D. Conn. 1982). Others, however, have held to the contrary. *See, e.g., Ruiz Romero v. Gonzalez Caraballo*, 681 F. Supp. 123 (D. Puerto Rico 1988) (infant plaintiff did not become a citizen protected by the United States Constitution until birth); *Harman v. Daniels*, 525 F. Supp. 798 (W.D. Va. 1981) (fetus has no fourteenth amendment rights while *in utero*). This Court is persuaded by the reasoning of *Ruiz Romero* and *Harman*. Therefore, the Court holds that because plaintiff Jason Wesley Reed was an unborn infant at the time of the accident, he cannot state a claim for relief under section 1983.

Accordingly, Jason Wesley Reed's claim in Count 12 of the amended complaint must be **DISMISSED**. In addition, based upon the earlier discussion regarding pendent party claims, the Court further holds that his claim in Count 13 must be **DISMISSED** as well.

E. State Claims Against Ragsdale

Defendant Ragsdale argues that the state law claims in Count 13 are barred by sections 2-202 and 3-102 of the Illinois Tort Immunity Act. As the plaintiffs point out, section 3-102 refers to a public entity's duty to exercise

ordinary care in the maintenance of its property. This section clearly has no applicability to the case at bar.[3]

Section 2-202 provides that "[a] public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes willful and wanton conduct." ILL. REV. STAT. ch. 85, ¶ 2-202 (1989). In the instant case, the plaintiffs have alleged that defendant Ragsdale's conduct was willful and wanton. Thus, their claims are not barred by section 2-202.

Finally, the Court addresses the issue of whether defendant Ragsdale is being sued in his individual or official capacity. The plaintiffs have stated in a memorandum that the claims against all of the officers are based upon their personal conduct and, thus, are brought against the officers in their individual capacities. The amended complaint, however, fails to reflect this intention.

The Seventh Circuit has held that section 1983 actions should be characterized as an "official capacity" suits where the complaints "fail to designate expressly the nature of the suit through utilization of the terms 'official capacity'

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[3] It is possible that the reference to section 3-102 resulted from a typographical error, and that the defendant intended to cite to section 4-102 of the Tort Immunity Act. Section 4-102 states that "[n]either a local public entity nor a public employee is liable for . . . failure to provide adequate police protection or service, failure to prevent the commission of crimes, failure to detect or solve crimes, and failure to identify or apprehend criminals." Ill. Rev. Stat. ch. 85, ¶ 4-102 (1989). As the Court noted above, however, the claims against Ragsdale are not for failure to provide police protection. Rather, the plaintiffs allege that Ragsdale acted willfully and wantonly in chasing Rice without sounding a siren or operating flashing lights. Therefore, the plaintiffs' claims are not barred by section 4-102.

or 'individual capacity,' but which list in the case name of the complaint the official's job title . . . ." *Kolar v. County of Sangamon*, 756 F.2d 564, 568 (7th Cir. 1985). "If a plaintiff intends to sue public officials in their individual capacities or in both their official and individual capacities . . . he should expressly state so in the complaint." *Id.* at 568-69.

Based upon this standard, the Court finds that the plaintiffs' amended complaint improperly states a claim against Ragsdale in his official capacity. However, the Court **GRANTS** the plaintiffs' request for leave to amend the complaint to state claims against Ragsdale in his individual capacity.

III. SUMMARY

The Court **GRANTS** defendants Davidson and the City of Martinsville's motion for leave to file their appearance, jury demand and motion to dismiss (Document No. 15), their Motion to Correct Defendants' Motion to Dismiss (Document No. 30), and their motions for leave to file additional appearances (Document Nos. 18 and 36).

The Court further **GRANTS** the Plaintiffs' Motion for Leave to File Memorandum in Opposition to Motion to Dismiss Out of Time (Document No. 16) and Plaintiffs' Motion for Leave to File Additional Authority in Support of Their Responses to the Motions to Dismiss (Document No. 35).

The Court **DENIES** as **MOOT** defendants Davidson and City of Martinsville's third motion for leave to file an additional appearance (Document No. 28) and defendant Orchard Inn's Motion to Dismiss (Document No. 25).

The Court *sua sponte* **DISMISSES** Counts 1 through 8 of the amended complaint for lack of subject matter jurisdiction.

The Court **GRANTS** the motions to dismiss filed by defendants Gardner and the Illinois State Police (Document No. 11), Davidson and the City of Martinsville (*See* Document No. 15), and Bender and Clark County (Document No. 23).

The Court further **GRANTS** the motion to dismiss the claims against defendant Jasper County (Document No. 8) in Count 13. Defendant Ragsdale's motion to dismiss, contained in the same document, is **GRANTED** in part and **DENIED** in part. Jason Wesley Reed's claims are **DISMISSED** from Counts 12 and 13. However, the remaining claims against Ragsdale in Counts 12 and 13 are allowed to stand.

The Court finds there is no just reason for delay and directs the Clerk of the Court to enter judgment (1) dismissing Counts 1 through 7 against defendant Rice; (2) dismissing Count 8 against defendant Irby; (3) dismissing Counts 10 and 11 against defendants Gardner, Davidson, Bender, the City of Martinsville, and Clark County; (4) dismissing Jasper County from Count 13; and (5) dismissing the claims of Jason Wesley Reed from Counts 12 and 13.

Finally, the Court **GRANTS** the plaintiffs leave to amend their complaint to expressly invoke the Court's jurisdiction under 28 U.S.C. § 1343(3), to identify their civil rights claims as being brought pursuant to 42 U.S.C. § 1983, and to clarify that the civil rights claim is brought against defendant Ragsdale in his individual, rather than official, capacity.

IT IS SO ORDERED.

DATED: July 10, 1991

/s/ James L. Foreman
Chief Judge

[Filed September 24, 1990]

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS, ILLINOIS

RICHARD REED, Individually and as administrator of the decedents' estates of PAMELA JO REED and JASON WESLEY REED, and as guardian of the estates of ANGELA REED and MARILYN REED, minors, and MARILYN KUYKENDALL and ROY KUYKENDALL,	)	
Plaintiffs,	)	
vs.	)	No. 90-4199-JLF
LARRY RICE, Serve: 1418 S. New Jersey Indianapolis, IN	)	PLAINTIFFS DEMAND TRIAL BY JURY
and	)	
CATHY IRBY, Serve: P.O. Box 264 Noble, Illinois	)	
and	)	
ORCHARD INN, INC., Serve: Jerry Jansen 800 N. 3rd Street Effingham, IL 62401	)	
and	)	

TROOPER THOMAS GARDNER,
Serve: c/o Illinois State
Police Department
District 12
Effingham, IL 62401

and

DEPARTMENT OF STATE POLICE,
Serve: Jeremy Margolis
Director of State
Police
State Armory, Rm. 103
Springfield, IL 62706

and

CHIEF HERMAN A. DAVIDSON,
Serve: c/o Martinsville
Police Department
19 West Cumberland
Martinsville, IL 62442

and

CITY OF MARTINSVILLE,
Serve: Mayor Truman Dean
P.O. Box 340
Martinsville, IL 62442

and

DEPUTY SHERIFF JAMES F. BENDER
Serve: c/o Clark County
Sheriff's Dept.
207 N. 5th Street
Marshall, IL 62441

and

CLARK COUNTY, ILLINOIS,
Serve: County Clerk
Lester E. Litteral
Clark County Courthouse
Marshall, IL 62441

and

DEPUTY SHERIFF JACK RAGSDALE,
Serve: c/o Jasper County
Sheriff's Department
106 E. Morgan
P.O. Box 112
Newton, IL 62448

and

JASPER COUNTY,
Serve: County Clerk
Ray Diel
Jasper County
Courthouse
100 W. Jourdan
Newton, IL 62448

Defendants.

FIRST AMENDED COMPLAINT AND JURY DEMAND

1. Jurisdiction is involved pursuant to 28 USC Section 1331 as to the Civil Rights claims, and the doctrine of pendant jurisdiction as to the state law claims.

2. Venue is invoked under 28 USC Section 1391(b), in that the claims asserted herein arose in Clark County and Jasper County, Illinois, both within the Southern District of Illinois.

COUNT 1

STATE LAW CLAIM OF RICHARD REED AS ADMINISTRATOR OF THE ESTATE OF PAMELA JO REED AGAINST DEFENDANT LARRY RICE.

1. Richard Reed is the administrator of the estate of Pamela Jo Reed, appointed by the Probate Court of Richland County, Illinois.

2. On 9/11/88, decedent Pamela Jo Reed, was riding in a Chevrolet Suburban being operated by her husband plaintiff Richard Reed. She was the front seat passenger. They were travelling north on Illinois Route 130 in Jasper County, Illinois.

3. At about 2:40 p.m., the Reeds were struck head-on by a car being driven by defendant Larry Rice.

4. The negligence of defendant Rice caused or contributed to cause the crash in that defendant Rice, who was proceeding south on Route 130, crossed the center line and operated his car in an intoxicated condition.

5. As a result of the crash, Pamela Jo Reed, age 30, sustained lacerations of the major blood vessels, fractured ribs, multiple fractures of her right arm, right leg and pelvis, and a severe avulsion fracture of the scalp. She died of these injuries within hours of the crash despite medical treatment of a cost of approximately $7,000.00. She was eight months pregnant at the time of her death.

6. Pamela Jo Reed was married to plaintiff Richard Reed at the time of her death, and was the mother of the minors Angela Reed and Marilyn Reed.

WHEREFORE, plaintiff Richard Reed, as administrator of the estate of Pamela Jo Reed, prays for damages against defendant Larry Rice for the conscious pain and suffering and the medical expenses of Pamela Jo Reed under the Survival Act, Ill. Rev. Stat. Ch. 110-½, Para-

graph 27-6, for her funeral expenses under the Family Expenses Act, Ill. Rev. Stat. Ch. 40, Paragraph 1015, and for the pecuniary injuries to Richard Reed, Angela Reed, and Marilyn Reed resulting from Pamela Jo Reed's death, including the loss of her society and support, under the Wrongful Death Act, Ill. Rev. Stat. Ch. 70, Paragraph 1, all in the amount of THREE MILLION DOLLARS, and for costs expended herein.

COUNT 2

STATE LAW CLAIM OF RICHARD REED, AS ADMINISTRATOR OF THE ESTATE OF JASON WESLEY REED AGAINST DEFENDANT LARRY RICE.

1. Richard Reed is the administrator of the estate of Jason Wesley Reed, appointed by the Probate Court of Richland County, Illinois.

2. On 9/11/88, decedent Pamela Jo Reed, was riding in a Chevrolet Suburban being operated by her husband plaintiff Richard Reed. She was the front seat passenger. They were travelling north on Illinois Route 130 in Jasper County, Illinois.

3. At about 2:40 p.m., the Reeds were struck head-on by a car being driven by defendant Larry Rice.

4. The negligence of defendant Rice caused or contributed to cause the crash in that defendant Rice, who was proceeding south on Route 130, crossed the center line and operated his car in an intoxicated condition.

5. The baby with whom Pamela Jo Reed was pregnant, Jason Wesley Reed, also died as a result of the crash. His gestational age was 32 weeks. The crash caused the placenta to separate from the uterus.

6. Richard Reed was the father of Jason Wesley Reed and Angela and Marilyn Reed were his only siblings.

WHEREFORE, Richard Reed, as administrator of the estate of Jason Wesley Reed, prays for damages against defendant Larry Rice for the conscious pain and suffering of Jason Wesley Reed under the Survival Act, Ill. Rev. Stat. Chapter 110-½, Paragraph 27-6, for his funeral expenses under the Family Expenses Act, Ill. Rev. Stat. Ch. 40, Paragraph 1015, and for the pecuniary injuries to Richard Reed, Angela Reed and Marilyn Reed, resulting from Jason Wesley Reed's death, including the loss of his society and support, under the Wrongful Death Act, Ill. Rev. Stat. Ch. 70, Paragraph 1, all in the amount of ONE MILLION DOLLARS ($1,000,000.00), and for costs expended herein.

COUNT 3

STATE LAW CLAIM OF RICHARD REED, AS ADMINISTRATOR OF THE MINOR'S ESTATE OF ANGELA REED, AGAINST DEFENDANT LARRY RICE.

1. Richard Reed is administrator of the estate of Angela Reed, a minor, appointed by the Probate Court of Richland County, Illinois.

2. On 9/11/88, plaintiff Angela Reed, age 7, was riding in a Chevrolet Suburban being operated by her father plaintiff Richard Reed. She was the rear passenger. They were travelling north on Illinois Route 130 in Jasper County, Illinois.

3. At about 2:40 p.m., the Reeds were struck head-on by a car being driven by defendant Larry Rice.

4. The negligence of defendant Rice caused or contributed to cause the crash in that defendant Rice, who was proceeding south on Route 130, crossed the center line and operated his car in an intoxicated condition.

5. Angela Reed sustained bruises and scratches in the crash and was treated and released at an emergency room at a cost of less than $1,000.00. Also as a result of the crash, she suffered and continues to suffer severe emotional trauma.

WHEREFORE, Richard Reed, as administrator of the minor's estate of Angela Reed, prays for damages against defendant Larry Rice for the personal injuries to Angela Reed in the amount of TWO HUNDRED THOUSAND DOLLARS, ($200,000.00), and for costs expended herein.

COUNT 4

STATE LAW CLAIM OF RICHARD REED, AS ADMINISTRATOR OF THE MINOR'S ESTATE OF MARILYN REED AGAINST DEFENDANT LARRY RICE.

1. Richard Reed is the administrator of the estate of Marilyn Reed, a minor, appointed by the Probate Court of Richland County, Illinois.

2. On 9/11/88, plaintiff Marilyn Reed, age 17 months, was riding in a Chevrolet Suburban being operated by her father plaintiff Richard Reed. She was the rear passenger. They were travelling north on Illinois Route 130 in Jasper County, Illinois.

3. At about 2:40 p.m., the Reeds were struck head-on by a car being driven by defendant Larry Rice.

4. The negligence of defendant Rice caused or contributed to cause the crash in that defendant Rice, who was proceeding south on Route 130, crossed the center line and operated his car in an intoxicated condition.

5. As a result of the crash, Marilyn Reed suffered brain damage with post-traumatic encephalopathy and seizures, and fractures of both femurs and a fractured mandible. Her medical expenses to date are over $100,000.00.

WHEREFORE, plaintiff Richard Reed, as administrator of the minor's estate of Marilyn Reed, prays for damages against defendant Larry Rice for the personal injuries to Marilyn Reed, in the amount of THREE MILLION DOLLARS, ($3,000,000.00), and for costs expended herein.

COUNT 5

STATE LAW CLAIM OF RICHARD REED INDIVIDUALLY, AGAINST DEFENDANT LARRY RICE.

1. On 9/11/88, plaintiff Richard Reed, was driving his Chevrolet Suburban north on Illinois Route 130 in Jasper County, Illinois, accompanied by his family.

2. At about 2:40 p.m., the Reeds were struck head-on by a car being driven by defendant Larry Rice.

3. The negligence of defendant Rice caused or contributed to cause the crash in that defendant Rice, who was proceeding south on Route 130, crossed the center line and operated his car in an intoxicated condition.

4. Plaintiff Richard Reed sustained a fractured wrist as a result of the crash, and has become obligated for medical expenses for treatment to himself and to his daughter Marilyn in excess of $100,000.00, which expenses for Marilyn are continuing. He further suffers severe emotional trauma from the experience.

WHEREFORE, plaintiff Richard Reed, individually, prays for damages against defendant Larry Rice for his own personal injuries and for his and Marilyn Reed's medical expenses, in the amount of FIVE HUNDRED THOUSAND DOLLARS, ($500,000.00), and for costs expended herein.

COUNT 6

STATE LAW CLAIM OF MARILYN KUYKENDALL AGAINST DEFENDANT LARRY RICE.

1. On 9/11/88, plaintiff Marilyn Kuykendall, was riding in a Chevrolet Suburban being operated by her son-in-law plaintiff Richard Reed. She was the rear passenger. They were travelling north on Illinois Route 130 in Jasper County, Illinois.

2. At about 2:40 p.m., the Reeds were struck head-on by a car being driven by defendant Larry Rice.

3. The negligence of defendant Rice caused or contributed to cause the crash in that defendant Rice, who was proceeding south on Route 130, crossed the center line and operated his car in an intoxicated condition.

4. As a result of the crash, plaintiff Marilyn Kuykendall suffered fractures of her right arm, left ankle, pelvis, left leg, and internal injuries including injuries to her bladder and bowel. She has become obligated for medical expenses in excess of $200,000.00.

WHEREFORE, plaintiff Marilyn Kuykendall prays for damages against defendant Larry Rice in the amount of ONE MILLION FIVE HUNDRED THOUSAND DOLLARS, ($1,500,000.00), and for costs expended herein.

COUNT 7

STATE LAW CLAIM OF ROY KUYKENDALL AGAINST DEFENDANT LARRY RICE.

1. On 9/11/88, plaintiff Roy Kuykendall, was riding in a Chevrolet Suburban being operated by plaintiff Richard Reed. He was the rear passenger. They were travelling north on Illinois Route 130 in Jasper County, Illinois.

2. At about 2:40 p.m., the Reeds were struck head-on by a car being driven by defendant Larry Rice.

3. The negligence of defendant Rice caused or contributed to cause the crash in that defendant Rice, who was proceeding south on Route 130, crossed the center line and operated his car in an intoxicated condition.

4. As a result of the crash, plaintiff Roy Kuykendall suffered and continues to suffer fractured ribs, back pain and severe emotional trauma, and has incurred medical expenses in excess of $50,000.00.

WHEREFORE, plaintiff Roy Kuykendall prays for damages against defendant Larry Rice in the amount of FIVE HUNDRED THOUSAND DOLLARS, ($500,000.00), plus costs expended herein.

COUNT 8

STATE LAW CLAIMS OF ALL PLAINTIFFS AGAINST DEFENDANT CATHY IRBY.

1. On 9/11/88, plaintiffs were the occupants of a Chevrolet Suburban which was hit head on by a car operated by defendant Larry Rice, who was intoxicated and who crossed the center line.

2. The car which defendant Larry Rice was driving at the time of the crash was owned by defendant Cathy Irby.

3. Approximately two hours before the crash, defendant Cathy Irby, along with defendants Gardner, Davidson and Bender, as alleged in Counts X and XI, negligently entrusted her car to defendant Larry Rice when she knew or should have known that Rice was intoxicated, that he would drive the car, and that when he drove the car, injury was likely to result.

4. Defendant Irby's negligence caused or contributed to cause the crash.

5. As a result of the crash, Pamela Jo Reed, age 30, sustained lacerations of the major blood vessels, frac-

tured ribs, multiple fractures of her right arm, right leg and pelvis, and a severe avulsion fracture of the scalp. She died of these injuries within hours of the crash despite medical treatment of a cost of approximately $7,000.00. She was eight months pregnant at the time of her death. Pamela Jo Reed was married to plaintiff Richard Reed at the time of her death, and was the mother of the minors Angela Reed and Marilyn Reed.

6. The baby with whom Pamela Jo Reed was pregnant, Jason Wesley Reed, also died as a result of the crash. His gestational age was 32 weeks. The crash caused the placenta to separate from the uterus. Richard Reed was the father of Jason Wesley Reed and Angela and Marilyn Reed were his only siblings.

7. Angela Reed sustained bruises and scratches in the crash and was treated and released at an emergency room at a cost of less than $1,000.00. Also as a result of the crash, she suffered and continues to suffer severe emotional trauma.

8. As a result of the crash, Marilyn Reed suffered brain damage with post-traumatic encephalopathy and seizures, and fractures of both femurs and a fractured mandible. Her medical expenses to date are over $100,000.00.

9. Plaintiff Richard Reed sustained a fractured wrist as a result of the crash, and has become obligated for medical expenses for treatment to himself and to his daughter Marilyn in excess of $100,000.00, which expenses for Marilyn are continuing. He further suffers severe emotional trauma from the experience.

10. As a result of the crash, plaintiff Marilyn Kuykendall suffered fractures of her right arm, left ankle, pelvis, left leg, and internal injuries including injuries to her bladder and bowel. She has become obligated for medical expenses in excess of $200,000.00.

11. As a result of the crash, plaintiff Roy Kuykendall suffered and continues to suffer fractured ribs, back pain and severe emotional trauma, and has incurred medical expenses in excess of $50,000.00.

WHEREFORE, plaintiff Richard Reed, as administrator of the Estate of Pamela Jo Reed, prays for damages against defendant Cathy Irby in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the estate of Jason Wesley Reed, prays for damages against defendant Cathy Irby in the amount of $1,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Angela Reed, prays for damages against defendant Cathy Irby in the amount of $200,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Marilyn Reed, prays for damages against defendant Cathy Irby in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, individually, prays for damages against defendant Cathy Irby in the amount of $500,000.00, and for costs; plaintiff Marilyn Kuykendall prays for damages against defendant Cathy Irby in the amount of $1,500,000.00, and for costs, and plaintiff Roy Kuykendall prays for damages against defendant Cathy Irby in the amount of $500,000.00, and for costs.

COUNT 9

STATE LAW CLAIMS OF ALL PLAINTIFFS AGAINST THE ORCHARD INN, INC.

1. On 9/11/88, plaintiffs were the occupants of a Chevrolet Suburban which was hit head on by a car operated by defendant Larry Rice, who was intoxicated and who crossed the center line.

2. On the morning of the crash, defendant Orchard Inn, Inc., sold liquor which was consumed by Rice, and which caused his intoxication.

3. Rice's intoxication caused or contributed to cause the crash.

4. As a result of the crash, Pamela Jo Reed, age 30, sustained lacerations of the major blood vessels, fractured ribs, multiple fractures of her right arm, right leg and pelvis, and a severe avulsion fracture of the scalp. She died of these injuries within hours of the crash despite medical treatment of a cost of approximately $7,000.00. She was eight months pregnant at the time of her death. Pamela Jo Reed was married to plaintiff Richard Reed at the time of her death, and was the mother of the minors Angela Reed and Marilyn Reed.

5. The baby with whom Pamela Jo Reed was pregnant, Jason Wesley Reed, also died as a result of the crash. His gestational age was 32 weeks. The crash caused the placenta to separate from the uterus. Richard Reed was the father of Jason Wesley Reed and Angela and Marilyn Reed were his only siblings.

6. Angela Reed sustained bruises and scratches in the crash and was treated and released at an emergency room at a cost of less than $1,000.00. Also as a result of the crash, she suffered and continues to suffer severe emotional trauma.

7. As a result of the crash, Marilyn Reed suffered brain damage with post-traumatic encephalopathy and seizures, and fractures of both femurs and a fractured mandible. Her medical expenses to date are over $100,000.00.

8. Plaintiff Richard Reed sustained a fractured wrist as a result of the crash, and has become obligated for medical expenses for treatment to himself and to his daughter Marilyn in excess of $100,000.00, which expenses for Marilyn are continuing. He further suffers severe emotional trauma from the experience.

9. As a result of the crash, plaintiff Marilyn Kuykendall suffered fractures of her right arm, left ankle, pelvis, left leg, and internal injuries including injuries to her bladder and bowel. She has become obligated for medical expenses in excess of $200,000.00.

10. As a result of the crash, plaintiff Roy Kuykendall suffered and continues to suffer fractured ribs, back pain and severe emotional trauma, and has incurred medical expenses in excess of $50,000.00.

11. In addition, the crash caused the loss of the means of support from Pamela Reed, Richard Reed, Roy Kuykendall and Marilyn Kuykendall.

WHEREFORE, pursuant to Ill. Rev. Stat. Ch. 43, Paragraph 135, plaintiff Richard Reed, as administrator of the estates of Pamela Joe Reed, Jason Wesley Reed, Angela Reed, Marilyn Reed, and individually, prays for damages against defendant The Orchard Inn, Inc., in the amount of $320,000.00, and for costs; and plaintiffs Roy Kuykendall and Marilyn Kuykendall pray for damages against defendant The Orchard Inn, Inc., in the total amount of $200,000.00, and for costs.

COUNT 10

CIVIL RIGHTS CLAIMS OF ALL PLAINTIFFS AGAINST DEFENDANT GARDNER, DAVIDSON AND BENDER.

1. On 9/11/88, plaintiffs were the occupants of a Chevrolet Suburban which was hit head on by a car operated by defendant Larry Rice, who was intoxicated and who crossed the center line.

2. The car which defendant Larry Rice was driving at the time of the crash was owned by defendant Cathy Irby.

3. Approximately two hours before the crash, defendants Gardner, Davidson and Bender arrested defendant Cathy Irby in Clark County, Illinois. They left defendant Larry Rice inside Irby's car with Irby's keys, thereby entrusting the car to Rice, when they knew or should have known that Rice was intoxicated, that Rice would drive the car, and that when Rice drove the car, injury was likely to result. Defendants Gardner, Davidson and Bender, were thus deliberately indifferent to the safety of others including plaintiffs. Defendants thereby acting as state, county and municipal police officers, deprived plaintiffs of their life, liberty and property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

4. The conduct of defendants Gardner, Davidson and Bender caused or contributed to cause the crash.

5. As a result of the crash, Pamela Joe Reed, age 30, sustained lacerations of the major blood vessels, fractured ribs, multiple fractures of her right arm, right leg and pelvis, and a severe avulsion fracture of the scalp. She died of these injuries within hours of the crash despite medical treatment of a cost of approximately $7,000.00. She was eight months pregnant at the time of her death. Pamela Jo Reed was married to plaintiff Richard Reed at the time of her death, and was the mother of the minors Angela Reed and Marilyn Reed.

6. The baby with whom Pamela Jo Reed was pregnant, Jason Wesley Reed, also died as a result of the crash. His gestational age was 32 weeks. The crash caused the placenta to separate from the uterus. Richard Reed was the father of Jason Wesley Reed and Angela and Marilyn Reed were his only siblings.

7. Angela Reed sustained bruises and scratches in the crash and was treated and released at an emergency

room at a cost of less than $1,000.00. Also as a result of the crash, she suffered and continues to suffer severe emotional trauma.

8. As a result of the crash, Marilyn Reed suffered brain damage with post-traumatic encephalopathy and seizures, and fractures of both femurs and a fractured mandible. Her medical expenses to date are over $100,000.00.

9. Plaintiff Richard Reed sustained a fractured wrist as a result of the crash, and has become obligated for medical expenses for treatment to himself and to his daughter Marilyn in excess of $100,000.00, which expenses for Marilyn are continuing. He further suffers severe emotional trauma from the experience.

10. As a result of the crash, plaintiff Marilyn Kuykendall suffered fractures of her right arm, left ankle, pelvis, left leg, and internal injuries including injuries to her bladder and bowel. She has become obligated for medical expenses in excess of $200,000.00.

11. As a result of the crash, plaintiff Roy Kuykendall suffered and continues to suffer fractured ribs, back pain and severe emotional trauma, and has incurred medical expenses in excess of $50,000.00.

WHEREFORE, plaintiff Richard Reed, as administrator of the Estate of Pamela Jo Reed, prays for damages against defendants Gardner, Davidson and Bender, jointly and severally in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the estate of Jason Wesley Reed, prays for damages against defendants Gardner, Davidson and Bender, jointly and severally in the amount of $1,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Angela Reed, prays for damages against defendants Gardner, Davidson and Bender, jointly and sever-

ally in the amount of $200,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Marilyn Reed, prays for damages against defendants Gardner, Davidson and Bender, jointly and severally in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, individually, prays for damages against defendants Gardner, Davidson and Bender, jointly and severally in the amount of $500,000.00, and for costs; plaintiff Marilyn Kuykendall prays for damages against defendants Gardner, Davidson and Bender, jointly and severally in the amount of $1,500,000.00, and for costs, and plaintiff Roy Kuykendall prays for damages against defendants Gardner, Davidson and Bender, jointly and severally in the amount of $500,000.00, and for costs.

COUNT 11

STATE LAW CLAIMS OF ALL PLAINTIFFS FOR WILLFUL AND WANTON CONDUCT AGAINST DEFENDANTS GARDNER, DAVIDSON, BENDER, DEPARTMENT OF STATE POLICE, CITY OF MARTINSVILLE AND CLARK COUNTY.

1. On 9/11/88, plaintiffs were the occupants of a Chevrolet Suburban which was hit head on by a car operated by defendant Larry Rice, who was intoxicated and who crossed the center line.

2. The car which defendant Larry Rice was driving at the time of the crash was owned by defendant Cathy Irby.

3. Approximately two hours before the crash, defendants Gardner, Davidson and Bender arrested defendant Cathy Irby in Clark County, Illinois. They left defendant Larry Rice inside Irby's car with Irby's keys, thereby entrusting the car to Rice, when they knew or should have known that Rice was intoxicated, that Rice would

drive the car, and that when Rice drove the car, injury was likely to result. Defendants Gardner, Davidson and Bender, were thus deliberately indifferent to the safety of others including plaintiffs. Defendants thereby acting as state, county and municipal police officers, deprived plaintiffs of their life, liberty and property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

4. The conduct of defendants Gardner, Davidson and Bender caused or contributed to cause the crash.

5. The conduct of defendants Gardner, Davidson and Bender was willful and wanton within the meaning of Ill. Rev. Stat. Ch. 85, Paragraph 2-202.

6. At all times mentioned, defendant Gardner was acting within the course and scope of his employment with defendant Department of State Police; defendant Davidson was acting within the course and scope of his employment with defendant City of Martinsville; and defendant Bender was acting within the course and scope of his employment with defendant Clark County.

7. As a result of the crash, Pamela Joe Reed, age 30, sustained lacerations of the major blood vessels, fractured ribs, multiple fractures of her right arm, right leg and pelvis, and a severe avulsion fracture of the scalp. She died of these injuries within hours of the crash despite medical treatment of a cost of approximately $7,000.00. She was eight months pregnant at the time of her death. Pamela Jo Reed was married to plaintiff Richard Reed at the time of her death, and was the mother of the minors Angela Reed and Marilyn Reed.

8. The baby with whom Pamela Jo Reed was pregnant, Jason Wesley Reed, also died as a result of the crash. His gestational age was 32 weeks. The crash caused the placenta to separate from the uterus. Richard

Reed was the father of Jason Wesley Reed and Angela and Marilyn Reed were his only siblings.

9. Angela Reed sustained bruises and scratches in the crash and was treated and released at an emergency room at a cost of less than $1,000.00. Also as a result of the crash, she suffered and continues to suffer severe emotional trauma.

10. As a result of the crash, Marilyn Reed suffered brain damage with post-traumatic encephalopathy and seizures, and fractures of both femurs and a fractured mandible. Her medical expenses to date are over $100,000.00.

11. Plaintiff Richard Reed sustained a fractured wrist as a result of the crash, and has become obligated for medical expenses for treatment to himself and to his daughter Marilyn in excess of $100,000.00, which expenses for Marilyn are continuing. He further suffers severe emotional trauma from the experience.

12. As a result of the crash, plaintiff Marilyn Kuykendall suffered fractures of her right arm, left ankle, pelvis, left leg, and internal injuries including injuries to her bladder and bowel. She has become obligated for medical expenses in excess of $200,000.00.

13. As a result of the crash, plaintiff Roy Kuykendall suffered and continues to suffer fractured ribs, back pain and severe emotional trauma, and has incurred medical expenses in excess of $50,000.00.

WHEREFORE, plaintiff Richard Reed, as administrator of the Estate of Pamela Jo Reed, prays for damages against defendants Gardner, Davidson and Bender, Department of State Police, City of Martinsville, and Clark County, jointly and severally in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the estate of Jason Wesley Reed, prays

for damages against defendants Gardner, Davidson and Bender, Department of State Police, City of Martinsville, and Clark County, jointly and severally in the amount of $1,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Angela Reed, prays for damages against defendants Gardner, Davidson and Bender, Department of State Police, City of Martinsville, and Clark County, jointly and severally in the amount of $200,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Marilyn Reed, prays for damages against defendants Gardner, Davidson and Bender, Department of State Police, City of Martinsville, and Clark County, jointly and severally in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, individually, prays for damages against defendants Gardner, Davidson and Bender, Department of State Police, City of Martinsville, and Clark County, jointly and severally in the amount of $500,000.00, and for costs; plaintiff Marilyn Kuykendall prays for damages against defendants Gardner, Davidson and Bender, Department of State Police, City of Martinsville, and Clark County, jointly and severally in the amount of $1,500,000.00, and for costs, and plaintiff Roy Kuykendall prays for damages against defendants Gardner, Davidson and Bender, Department of State Police, City of Martinsville, and Clark County, jointly and severally in the amount of $500,000.00, and for costs.

COUNT 12

CIVIL RIGHTS CLAIMS OF ALL PLAINTIFFS AGAINST DEFENDANT RAGSDALE.

1. On 9/11/88, plaintiffs were the occupants of a Chevrolet Suburban which was hit head on by a car operated by defendant Larry Rice, who was intoxicated and who crossed the center line.

2. Beginning a few minutes before the crash, Deputy Jack Ragsdale of the Jasper County Sheriff's Department chased the car being driven by defendant Rice. Defendant Ragsdale drove at speeds of over 90 mph, in an unmarked car, without sounding a siren or operating adequate flasher lights, or otherwise giving an adequate warning to oncoming traffic, when he knew or should have known that Rice was drunk, would not pull over, and that injury was likely to result. Defendant Ragsdale's conduct in chasing Rice caused or contributed to cause the crash.

3. Defendant Ragsdale was thus deliberately indifferent to the safety of others, including plaintiffs, and thereby, acting as a county deputy sheriff, deprived plaintiffs of life, liberty and property without due process of law in violation of the Fourteenth Amendment to the United States Constitution.

4. As a result of the crash, Pamela Joe Reed, age 30, sustained lacerations of the major blood vessels, fractured ribs, multiple fractures of her right arm, right leg and pelvis, and a severe avulsion fracture of the scalp. She died of these injuries within hours of the crash despite medical treatment of a cost of approximately $7,000.00. She was eight months pregnant at the time of her death. Pamela Jo Reed was married to plaintiff Richard Reed at the time of her death, and was the mother of the minors Angela Reed and Marilyn Reed.

5. The baby with whom Pamela Jo Reed was pregnant, Jason Wesley Reed, also died as a result of the crash. His gestational age was 32 weeks. The crash caused the placenta to separate from the uterus. Richard Reed was the father of Jason Wesley Reed and Angela and Marilyn Reed were his only siblings.

6. Angela Reed sustained bruises and scratches in the crash and was treated and released at an emergency room at a cost of less than $1,000.00. Also as a result of the crash, she suffered and continues to suffer severe emotional trauma.

7. As a result of the crash, Marilyn Reed suffered brain damage with post-traumatic encephalopathy and seizures, and fractures of both femurs and a fractured mandible. Her medical expenses to date are over $100,000.00.

8. Plaintiff Richard Reed sustained a fractured wrist as a result of the crash, and has become obligated for medical expenses for treatment to himself and to his daughter Marilyn in excess of $100,000.00, which expenses for Marilyn are continuing. He further suffers severe emotional trauma from the experience.

9. As a result of the crash, plaintiff Marilyn Kuykendall suffered fractures of her right arm, left ankle, pelvis, left leg, and internal injuries including injuries to her bladder and bowel. She has become obligated for medical expenses in excess of $200,000.00.

10. As a result of the crash, plaintiff Roy Kuykendall suffered and continues to suffer fractured ribs, back pain and severe emotional trauma, and has incurred medical expenses in excess of $50,000.00.

WHEREFORE, plaintiff Richard Reed, as administrator of the Estate of Pamela Jo Reed, prays for damages against defendant Ragsdale in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the estate of Jason Wesley Reed, prays for damages against defendant Ragsdale in the amount of $1,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Angela Reed, prays for damages against defendant Ragsdale in the amount

of $200,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Marilyn Reed, prays for damages against defendant Ragsdale in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, individually, prays for damages against defendant Ragsdale in the amount of $500,000.00, and for costs; plaintiff Marilyn Kuykendall prays for damages against defendant Ragsdale in the amount of $1,500,000.00, and for costs, and plaintiff Roy Kuykendall prays for damages against defendant Ragsdale in the amount of $500,000.00, and for costs.

COUNT 13

STATE LAW CLAIMS OF ALL PLAINTIFFS FOR RECKLESS, WILLFUL AND WANTON CONDUCT AGAINST DEFENDANTS RAGSDALE AND JASPER COUNTY.

1. On 9/11/88, plaintiffs were the occupants of a Chevrolet Suburban which was hit head on by a car operated by defendant Larry Rice, who was intoxicated and who crossed the center line.

2. Beginning a few minutes before the crash, Deputy Jack Ragsdale of the Jasper County Sheriff's Department chased the car being driven by defendant Rice. Defendant Ragsdale drove at speeds of over 90 mph, in an unmarked car, without sounding a siren or operating adequate flasher lights, or otherwise giving an adequate warning to oncoming traffic, when he knew or should have known that Rice was drunk, would not pull over, and that injury was likely to result. Defendant Ragsdale's conduct in chasing Rice caused or contributed to cause the crash.

3. Defendant Ragsdale's conduct was in reckless disregard for the safety of others within the meaning of

Ill. Rev. Stat. Ch. 95-½, Paragraph 11-205(e), and was willful and wanton within the meaning of Ill. Rev. Stat. Ch. 85, Paragraph 2-202, and violated Ill. Rev. Stat. Ch. 95-½, Paragraph 12-601(b).

4. At all times mentioned, defendant Ragsdale was acting within the course and scope of his employment as a deputy sheriff with defendant Jasper County.

5. As a result of the crash, Pamela Joe Reed, age 30, sustained lacerations of the major blood vessels, fractured ribs, multiple fractures of her right arm, right leg and pelvis, and a severe avulsion fracture of the scalp. She died of these injuries within hours of the crash despite medical treatment of a cost of approximately $7,000.00. She was eight months pregnant at the time of her death. Pamela Jo Reed was married to plaintiff Richard Reed at the time of her death, and was the mother of the minors Angela Reed and Marilyn Reed.

6. The baby with whom Pamela Jo Reed was pregnant, Jason Wesley Reed, also died as a result of the crash. His gestational age was 32 weeks. The crash caused the placenta to separate from the uterus. Richard Reed was the father of Jason Wesley Reed and Angela and Marilyn Reed were his only siblings.

7. Angela Reed sustained bruises and scratches in the crash and was treated and released at an emergency room at a cost of less than $1,000.00. Also as a result of the crash, she suffered and continues to suffer severe emotional trauma.

8. As a result of the crash, Marilyn Reed suffered brain damage with post-traumatic encephalopathy and seizures, and fractures of both femurs and a fractured mandible. Her medical expenses to date are over $100,000.00.

9. Plaintiff Richard Reed sustained a fractured wrist as a result of the crash, and has become obligated for medical expenses for treatment to himself and to his daughter Marilyn in excess of $100,000.00, which expenses for Marilyn are continuing. He further suffers severe emotional trauma from the experience.

10. As a result of the crash, plaintiff Marilyn Kuykendall suffered fractures of her right arm, left ankle, pelvis, left leg, and internal injuries including injuries to her bladder and bowel. She has become obligated for medical expenses in excess of $200,000.00.

11. As a result of the crash, plaintiff Roy Kuykendall suffered and continues to suffer fractured ribs, back pain and severe emotional trauma, and has incurred medical expenses in excess of $50,000.00.

WHEREFORE, plaintiff Richard Reed, as administrator of the Estate of Pamela Jo Reed, prays for damages against defendants Ragsdale and Jasper County, jointly and severally in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the estate of Jason Wesley Reed, prays for damages against defendants Ragsdale and Jasper County, jointly and severally in the amount of $1,000,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Angela Reed, prays for damages against defendants Ragsdale and Jasper County, jointly and severally in the amount of $200,000.00, and for costs; plaintiff Richard Reed, as administrator of the minor's estate of Marilyn Reed, prays for damages against defendants Ragsdale and Jasper County, jointly and severally in the amount of $3,000,000.00, and for costs; plaintiff Richard Reed, individually, prays for damages against defendants Ragsdale and Jasper County, jointly and severally in the amount of $500,000.00, and for costs; plaintiff Marilyn

Kuykendall prays for damages against defendants Ragsdale and Jasper County, jointly and severally in the amount of $1,500,000.00, and for costs; and plaintiff Roy Kuykendall prays for damages against defendants Ragsdale and Jasper County, jointly and severally in the amount of $500,000.00, and for costs.

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